decision of the learned judge on the matter before him is contained in the following passage of his judgment:—

"I see no reason for adopting a narrow or restricted construction of item 81 and I have come to the conclusion that a getting up fee is allowable in the present case under item 81 or item 82 of Schedule C of the Rules of the High Court as the work done was properly and reasonably necessary for the getting up of the case having regard to all the circumstances.

The registrar was clearly of the opinion that a fee should be allowed but having reached the conclusion that he could not allow it under either item 81 or item 82 decided on a compromise to which I have already alluded. In my view there are no special grounds here which would justify the application of item 80. As there has been no cross-appeal as to the amount of $150 allowed by the registrar that figure will stand but as a 'getting up' fee under item 81".

It is against this decision that this appeal is now brought by the respondent.

The first question to be determined is whether Order LXII rule 49(2) applies to applications made by way of originating summons. In considering this question it is important to note that Preliminary Rule 3(d) of the Rules of the Supreme Court, 1934 reads as follows:—

"(d) 'Originating' as applied to any motion, petition, summons or other proceeding means that such proceeding is taken otherwise than in a pending cause or matter."

In my opinion it is clear from the wording of Preliminary Rule 3(d) that an originating summons is a particular type of summons, namely, a summons issued otherwise than in a pending cause or matter. It can be seen therefore that an originating summons comes within the four corners of Order LXII rule 49(2) which provides as follows:—

"(2) Where the preparation of the case or matter for laying it before a judge or registrar in chambers, or on a summons, has required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore appears to the judge or registrar to deserve higher remuneration than the ordinary fees, the judge or registrar may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the judge or registrar, specifying distinctly the grounds of such allowances, such fee not exceeding one hundred dollars as in his discretion he thinks fit, instead of the above-mentioned fees."

Counsel for the applicant has pointed out that the provisions of Order LXII rule 49(2) are based on the wording of Order 65 rule 27(12) of the Rules of the Supreme Court of England. This particular Order 65 rule 27(12), which was among those Orders and rules which were revoked in 1960, dealt specifically with the remuneration of solicitors practising in England who were concerned with the preparation of cases or matters to be laid before a judge at chambers on a summons. While this is true, it seems to me that Order LXII rule 49(2) has to be construed in the context of the circumstances prevailing in Singapore where every legal practitioner is an advocate and solicitor. In my opinion, the fee for the preparation of the matter which was laid before the judge who approved the settlement could not exceed the sum of $100.

Counsel for the applicant has submitted that by virtue of Preliminary Rule 2 of the Rules of the Supreme Court, 1934, the provisions of Order 80 rule 12 of the Rules of the Supreme Court of England, which deal with the approval of settlements of claims for money made by persons under disability, should be followed and adopted in Singapore. In my view, as there has been in existence for some time in Singapore a procedure whereby settlements of such claims have been approved, this submission must fail.

Several cases were cited during the argument which dealt with the question at which stage of an action a "getting up" fee could properly be allowed. In view of the conclusion which I have reached that the originating summons taken out by the applicant was a summons within the meaning of Order LXII rule 49(2), the decisions in these cases are, in my opinion, not applicable to the facts of the present case.

It follows from the foregoing that the appeal must be allowed. There will be no "getting up" fee under item 81 of Schedule C in this case. A fee of $100 is allowed for the preparation of the case which was laid before the judge who approved the settlement.

It is perhaps desirable that the provisions of Order LXII rule 49(2) be considered by the proper authority with a view to their being amended.

By consent, no order as to costs.

Wee Chong Jin C.J.: I agree.

Chua J.: I agree.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Murphy & Dunbar.*

KHADIJAH v. STERLING DRUG (MALAYA) LTD.

[O.C.J. (Ali J.) February 12, 1967]

[J.B. — Civil Suit No. 163 of 1964]

Practice and Procedure — Costs — Award in action for damages amounting to $4,000 on 100% liability — Apportionment at 50% on a finding of contributory negligence reducing damages by $2,000 — Whether plaintiff entitled to have his costs taxed on High Court scale — R.S.C. 1957, O. 65 r. 12B — Civil Law Ordinance, 1956, s. 12.

This was an appeal on the question of costs. The plaintiff brought an action for damages arising from injuries she sustained in an accident and was awarded, on the basis of full liability, general damages amounting to $4,000, but on a finding of contributory negligence, which the learned trial judge apportioned at 50%, the

amount of total damages assessed as recoverable was reduced by $2,000. There was an order for costs from which the taxing master assumed that the successful plaintiff was entitled to have her costs taxed on the High Court scale. During taxation the defendant contended that as the plaintiff had recovered only a sum of $2,000 her bill of costs should in terms of O. 65 r. 12B be taxed on the Subordinate Court scale. The plaintiff maintained that as the total award on 100% liability was beyond the jurisdiction of the Subordinate Court the action could not have been brought there.

Held: as the full amount recoverable, without deduction, was $4,000, a sum which was beyond the jurisdiction of the subordinate court to award, this action could not have been brought in that court, therefore the learned assistant registrar was right when he decided to tax costs on the High Court scale.

Case referred to:—

(1) *Kelly* v. *Stockport Corp.* [1949] 1 All E.R. 893.

APPEAL FROM THE REGISTRAR.

David Chelliah for the defendants/appellants.

P. M. Williams for the plaintiff/respondent.

Cur. Adv. Vult.

Ali J.: This is an appeal from the decision of the taxing master on the question of costs. The action was brought by an infant plaintiff for damages arising from injuries sustained in an accident involving a motor car driven by one of the defendants and owned by the other. At the conclusion of the trial Azmi J. (as he then was) awarded, on the basis of full liability, general damages amounting to $4,000, but on a finding of contributory negligence, which the learned trial judge apportioned at 50%, the amount of total damages assessed as recoverable was reduced by $2,000. There was an order of costs from which the learned assistant registrar assumed that the successful plaintiff was entitled to have her costs taxed on the High Court scale. What happened before the bill of costs came up for taxation was that a copy of the draft order of court when sent to the defendants' solicitors was returned with an indication that it was agreed to subject to an amendment in terms that the plaintiff shall not be entitled to any more costs than she would be entitled to if the proceedings had been brought in the subordinate court. For some reason or other this amendment was not included in the perfected order. During taxation the defendant argued that as the plaintiff had recovered only a sum of $2,000 the plaintiff's bill of costs should in terms of rule 12B of Order 65 of the Rules of the Supreme Court be taxed on the subordinate court scale. It was common ground that no certificate under that rule had been obtained by the successful plaintiff. The successful plaintiff, however, maintained that as the total award on 100% liability was beyond the jurisdiction of the subordinate court the action could not have been brought there.

Rule 12B of Order 65 is stated in these terms:

> "If any suit is brought in the High Court, which would have been within the jurisdiction of a Subordinate Court, or in which the plaintiff recovers a sum for which judgment could have been recovered in the Subordinate Court, the plaintiff shall not be entitled to any more costs than he would have been entitled to if the proceedings had been brought in the Subordinate Court, unless in any such suit a judge certifies that there was sufficient reason for bringing the suit in the High Court."

The question which necessarily arises in this appeal is whether this rule applies to the circumstances of the present case. Section 12 of the Civil Law Ordinance No. 5 of 1956 contains provisions relating to contributory negligence and sub-section (1) thereof provides:—

> "(1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:
>
> Provided that —
>
> (a) . . . . . .
>
> (b) . . . . . .

Sub-section (2) provides:—

> "(2) Where damages are recoverable by any person by virtue of the foregoing sub-section subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault."

These two sub-sections are identical in terms with the provisions of sections 1(1) and (2) of the Law Reform (Contributory Negligence) Act, 1945. In *Kelly* v. *Stockport Corpn.*[1] Tucker L.J. construing sub-section (2) said at page 895:—

> "Under that sub-section, the sum which the court has to record, as being that which would have been recoverable if the plaintiff had not been at fault, must necessarily be a sum which it was within the jurisdiction of that court to have awarded if it had not found that the claimant had been to blame. If counsel for the plaintiffs is right, the result of this sub-section would be to require the county court judge to record, as the sum which would have been recoverable, a sum in excess of that which he had jurisdiction to award."

With this view Asquith and Singleton LL.J. sitting in the same court agreed. Adopting the same view on the construction of sub-section (2) of section 12 of the Civil Law Ordinance, 1956, I am forced to the conclusion that as the full amount recoverable, without deduction, is $4,000, a sum which is beyond the jurisdiction of the subordinate court to award, this action could not have been brought in that court. Accordingly it must be held that the learned assistant registrar was right when he decided to tax costs on the High Court scale. The appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co.; Williams & Co.*